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Art Unit 3721 Examiner Paul R. Durand Paper No.
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kenneth Kutner

Serial No.: 10/786,929

**APPLICANT'S SUBSTITUTE
APPEAL BRIEF**

Filed: 02/26/2004

Commissioner for Patents
P. O. Box 1450 - Mail Stop AF
Alexandria, VA 22313-1450

Sir:

The following is Applicant's substitute appeal brief filed in response to office letter dated June 23, 2005 pursuant to Notice of Appeal being filed concurrently in accordance with 37 C.F.R. 41.37.

REAL PARTY IN INTEREST

The real party in interest is the Applicant, Kenneth Kutner.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellant or appellant's legal representative, or assignee, which will directly affect or be directed affected by, or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Presently pending are claims 1 to 3, inclusive. Claims 1 to 3, inclusive, are rejected.

STATUS OF AMENDMENTS

There have been no amendments filed subsequent to final rejection.

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SUMMARY OF CLAIMED SUBJECT MATTER

Briefly sated, the invention relates to a method of filling relatively large containers with particulate material at a single filling station by storing stacked collapsed containers on one side of the filling station and storing a plurality of collapsed liner elements on an opposite side of the filling station so that minimum space is required for storage of a large number of containers prior to use. Referring to the specification, Figure 1, and page 4, line 2, *et seq.*, a filling station 10 includes a stack of collapsed containers 11, a plurality of liner elements 12, and a hopper element 15 which dispenses particulate material on demand.

Claim 1 relates to a method including the provision of the filling station 15, the stack of containers 25, and the supply of bag-like liners 12. Figure 1 shows a container in erected condition for filling from the hopper after a liner element has been positioned. The closed container is illustrated in Figure 2.

Relative to claim 2, Figure 3 illustrates the container with a slip sheet 26.

Relative to claim 3, Figure 2 shows the container in sealed condition.

All of the claims are considered to stand or fall together.

GROUND'S OF REJECTION TO BE REVIEWED ON APPEALClaim Rejections - 38 U.S.C. 102

In his final rejection, Examiner has rejected claim 1, under Section 102(b) as being anticipated by Akoh, et. al (U.S. 4,089,256). Examiner has stated that in regard to claim 1, Akoh discloses the invention as claimed, including filling station 52, a stack of collapsible containers 22, plastic bag liners 48, placing the liner in the

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ARGUMENT**Claim Rejections - 38 U.S.C. 102**

In response, it is submitted that Akoh does not disclose the step (d) of serially placing the collapsed containers in erected condition beneath a hopper. Akoh contemplates an assembly line using relatively small containers which package goods for retail distribution.

Applicant's invention is directed to an improved method for bulk packaging of lightweight particulate material (see Applicant's specification, page 1, lines 8-11). Applicant's method includes the stacking of a small supply of relatively large containers adjacent the hopper station on one side thereof, and a supply of bags on an opposite side of the filling station. Each of the containers is manually erected beneath the hopper, following which a large liner is individually placed in the erected container for filling. The filled container is then sealed and closed in known manner, and transported from the hopper station, not on a conveyor belt, but depending upon weight, using a forklift truck. While the Kupersmit reference suggests this type of container, it does not teach the maintaining of a relatively small stack of such containers in folded condition adjacent the hopper station to be erected beneath the hopper, following which the liner is inserted for filling and sealing. The prior art practice includes assembling a relatively large number of large containers, inserting the liner in the containers, and moving the assembled containers and liner beneath the hopper, a cumbersome procedure. Applicant's method allows for the containers to be maintained in collapsed condition until just prior to filling, thereby making it possible to store a much larger number of containers in a given space surrounding the hopper station.

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container, filling the container with material from station 52, and closing the container (see Figure 1, and C3, L21-C4, L30).

Claim Rejections - 35 U.S.C. 103

Examiner has rejected claim 2, under Section 103(a) as being unpatentable over Akoh, in view of Kupersmit (U.S. 5,090,614). Examiner explains that Akoh discloses the invention substantially as claimed, including the use of a conveyor 34 to move packages down a manufacturing line. What Akoh does not disclose is the use of a slip sheet. However Kupersmit teaches that it is old and well-known in the art of packages to have an integrated slip sheet 52 for the purpose of moving a box. Therefore, Examiner states that it would have been obvious to one having ordinary skill in the art at the time of the invention to have produced the invention of Akoh with the slip sheet as taught by Kupersmit for the purpose of moving a box.

Examiner has rejected claim 3, under 35 U.S.C. 103(a) as being unpatentable over Akoh, in view of Henie, et al. (U.S. 4,287,703). Examiner has explained that Akoh discloses the invention substantially as claimed, including closing the end of the bag liner after it has been filled. What Akoh does not disclose is the sealing of the bag by heat. However, Henie teaches that it is old and well-known in the art of packages to use heat sealing at a seal station 22 to close bags after they have been filled, for the purpose of reducing contamination and spillage. Therefore, Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the invention of Akoh with sealing means as taught by Heine for the purpose of reducing contamination and spillage.

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Applicant describes the prior art commencing in page 1 of his specification at line 12. As mentioned, the loaded containers normally weigh several hundred pounds as a result of bulk packaging. It is submitted that claim 1 is not anticipated by Akoh, who shows the packaging location referred to in Applicant's specification, lines 10 and 11. In a Section 102 rejection, the reference relied upon should generally show what Applicant is doing. No such suggestion appears in Akoh.

Claim Rejections - 35 U.S.C. 103

In response to Examiner's rejection of claim 2, it is submitted that there is no suggestion in Kupersmit to put a slip sheet on a commercial container which contains only eight or ten ounces of product, nor is there any need to do so. There is no need for a slip sheet with such a small container. It is, therefore, submitted that there is no teaching in Kupersmit which could be combined with Akoh, nor would the desirability or necessity of doing so be apparent to one skilled in the art.

In response to Examiner's rejection of claim 3, Applicant submits that his disclosure in page 1, lines 12-21 acknowledge that it is known to use a container, a separate synthetic resinous liner, and sealing the liner prior to closing the container. Akoh also contemplates closing his bag within the container at some point at an assembly-line station.

What Applicant does and is presently claiming, is something not capable of being performed using assembly-line procedures. The erection of the container is made after the container has been positioned beneath the hopper. While in this condition, the liner element is inserted and spread for filling. After filling, the liner is closed and sealing, and subsequently the container is also closed, as is known in the

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art. All of the above is performed at a single station beneath the hopper as manual operations. What Akoh teaches is applicable to a location to which Applicant's package is transported. At that point, the contents of Applicant's container are poured into a hopper suitable for filling small packages, at which point the teachings of Akoh are useful.

It is submitted as apparent that Akoh does not contemplate doing what Applicant is doing. The essence of Applicant's invention is the provision of a method which permits the elimination of the need of separating and erecting containers and storing them in erected condition to occupy a very substantial amount of space. Instead, the containers are positioned adjacent the hopper for serial erection beneath the hopper, and insertion of a liner which is also stored adjacent to the hopper. There is no suggestion of this method in Akoh. What Applicant is doing in a general sense, is known, but the specific way in which he performs the filling of large containers of particulate material is not suggested by any of the references cited.

Examiner's Response To Applicant's Arguments

It is believed that Examiner has misunderstood Applicant's position. Applicant has not argued regarding claim 1 that the primary reference of Akoh does not disclose the serial conveyance of containers. Applicant's position is that the containers are not serially conveyed, i.e. upon a conveyor belt. Applicant's containers are stacked adjacent the filling hopper, and are manually placed beneath the hopper, following which they are moved to erected condition, which is something quite different. Examiner as asserted that given the broadest reasonable interpretation of the phrase "serially", it falls within the teaching of Akoh. What Examiner apparently

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misunderstands is that Applicant's containers are not conveyed. They are manually positioned at a filling station.

Examiner has next argued that Applicant's invention is relying upon limitations that are not stated in the claim, and that the use of Akoh as the basis for a Section 102 rejection is that Akoh teaches every element of the claim in Applicant's invention, and that limitations, such as the size and weight of the container are not considered in the rejection because they do not appear in the claims, and that any such consideration would require further consideration to determine patentability.

It will be appreciated that Applicant's invention does not depend on a particular size of container, and any limitations in the claim to a particular size would be meaningless. It is noted that Applicant's invention includes the steps of providing a stack of collapsible pre-assembled containers each having a cover in generally planar collapsed condition (see step (b)). Subsequent step (d) provides for serially placing the collapsed containers in erected condition beneath the hopper, following which (e) individual liner elements are placed within the erected container element.

Akoh does not place a collapsed container in erected condition beneath the hopper. Akoh has previously erected small boxes and placed the liner within them for subsequent conveyor transport to a filling station, which is not the step taught by Applicant. It is only after the erected container is beneath the hopper that the liner, which is in stacked or spooled condition, is placed within the container. In contrast to Examiner's position, the limitations that he is looking for are clearly stated in the claim, as mentioned above. It is submitted that Examiner's reliance on Section 2131 of the Manual is not apposite. Applicant's method contemplates using structural elements

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that are known. Applicant uses these elements using a different series of steps which enables storage of the containers in relatively large number to occupy a relatively small amount of space adjacent the hopper. There is no indication of appreciation of Applicant's problem, let alone the solution.

Relative to claim 2, claim 2 is submitted as a dependent claim, and allowable for the same reasons. The method can be practiced using a container which has a slip sheet, or without one. This is equally true of claim 3 where sealing of the liner can be accomplished by a variety of means, not necessarily heat-sealing.

Examiner has cited *In re Fine*, 5 U.S.P.Q. 2d 1596, which supports Applicant's position, rather than Examiner's position.

It is submitted that obviousness is not shown by citing one or more references which show all of the structural elements which may be used in a method. In short, Examiner has not made a *prima facie* case. The case states in headnote 4 that dependent claims are non-obvious under Section 103 if the claims from which they depend are non-obvious.

It is often argued by appellants that obviousness was determined, at least in part, by hindsight relative to the appellant's disclosure. It is submitted that no such argument is necessary here. Examiner has improperly concluded that by showing all of the structural elements in a method claim in a single reference, that he has made a *prima facie* case. As mentioned above, if the problem addressed by the present applicant was not appreciated either by a worker skilled in the art or disclosed in a cited reference, it is difficult to imagine how the solution of the problem could be considered obvious.

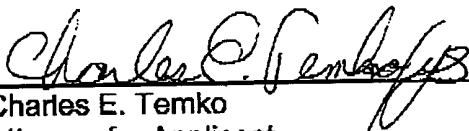
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CONCLUSION

On the basis of the above argument, it is submitted that the holding of the Examiner in finally rejecting claims 1 to 3, inclusive should be reversed.

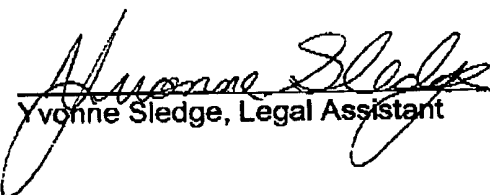
Respectfully,


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Dated: July 20, 2005Certification

The undersigned hereby certifies that a copy of the within Applicant's Substitute Brief on Appeal was placed in an envelope with first-class postage prepaid and mailed to Commissioner of Patents, P. O. Box 1450 - Mail Stop AF, Alexandria, VA 22313-1450 this 20th day of July, 2005 and copy of same faxed to same.


Yvonne Sledge, Legal Assistant

CLAIMS APPENDIXThe Claims on Appeal

1. A method for containing lightweight particulate materials for bulk shipment comprising the steps of:
 - a) providing a filling station including a hopper for dispensing said materials;
 - b) providing a stack of collapsible preassembled containers, each having a cover in generally planar collapsed condition;
 - c) providing a supply of synthetic resinous bag-like liner elements;
 - d) serially placing said collapsed containers in erected condition beneath said hopper;
 - e) placing an individual liner element within an erected container element;
 - f) filling said liner element with said particulate material to desired level; and
 - g) closing said liner element and closing said container element with a separate cover.
2. The method in accordance with claim 1, in which said containers include integral slip sheets.
3. The method in accordance with claim 1, in which said liner elements are closed by a heat sealing operation.